

Serial No. 10/714,992

REMARKS

Ross discloses an actuator K formed as a closed and bent loop of metal, with the left end abutting against a plunger 44 of an on-off valve D, with the actuator K further including shoulders which cooperate with a pivotal lever I. However, Ross does not disclose or suggest a pusher as recited in claim 9 as originally filed and having the inclined portion as recited in claim 10 as originally filed. Likewise, Ross does not disclose or suggest the interconnection between the adjusting plunger and driver as recited in claim 20 as originally filed. Additionally, claims 21-23 have been added to further define the relationship with the adjusting device, which structure and relationship are not taught by the prior art. Thus, it is respectfully submitted that claims 9, 10 and 20-23 and the claims which depend therefrom are in condition for allowance. Such favorable action is respectfully requested.

For the sake of completeness, the Examiner indicates that the structure of Ross "...is considered equivalent to that recited in applicant's claims...". This is not a proper basis for rejection. Specifically, as set forth in MPEP§2144.06:

In re Scott, 323 F.2d 1016, 139 USPQ 297 (CCPA 1963) ...The court reversed, holding that components which are functionally or mechanically equivalent are not necessarily obvious in view of one another,...

Examining the Scott decision, the CCPA held:

We disagree with the supposed logic of the Patent Office position. The Examiner and the board appear to hold that the mere existence of "functional and mechanical equivalence" establishes "obviousness". We think this involves a non-sequitur. Expedients which are functionally equivalent to each other are not necessarily obvious in view of one another. The statutory mandate of 35 U.S.C. 103 is that the claimed subject matter be unobvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. [Emphasis theirs]

Thus, even assuming that the structure of Ross is equivalent, for the sake of argument, does not support that the recitations of the claims (which apparently the Examiner concedes does not exist in Ross) are obvious. Favorable reconsideration is respectfully requested for this separate and independent reason.

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The Examiner has cited the United States patents listed in NOTICE OF REFERENCES CITED as B-E and N. By the lack of application of these references and others like them within the classes or subclasses searched, the Examiner apparently recognizes the clear patentability of the present invention over any of these references.

Therefore, since the claims of the present application have been shown to include limitations directed to the features of applicant's blowtorch which are neither shown, described, taught, nor alluded to in any of the references cited by the Examiner and by the applicant, whether those references are taken singly or in any combination, the Examiner is requested to allow claims 2, 4-7 and 9-23, as amended, of the present application and to pass this application to issue.

Respectfully submitted,

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